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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/053,750

01/21/2002

Morton M. Mower

2206-001 C

6121

7590

11/02/2006

Roberts Abokhair & Mardula, LLC  
Suite 1000  
11800 Sunrise Valley Drive  
Reston, VA 20191

EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/053,750	<b>Applicant(s)</b> MOWER, MORTON M.	
	<b>Examiner</b> Scott M. Getzow	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-15, 17-20, 22, 24, 25, 34-36, 38, 47, 50 and 58-66 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14, 17-20, 22, 24, 25, 34-36, 38, 47 and 50 is/are allowed.
- 6) ☒ Claim(s) 15 and 58-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/13/06</u> . | 6) <input type="checkbox"/> Other: _____  |

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Previously withdrawn claims 58-66 have been examined along with claims 12-15,17-20,22,24,25,34-36,38,47,50. Claims 10,11 are still considered to be withdrawn by applicant.

*Claim Rejections - 35 USC § 102*

1. Claims 15,59 are rejected under 35 U.S.C. 102(b) as being anticipated by Prystowsky et al (4554922).

Figure 15 shows a programmable stimulator 50 which can control the start time, duration and magnitude of the pulses sent to the patient's heart. The current produced by the stimulator is non-excitatory, see abstract. Col. 5:48-60 teach that various parameters of the pulses can be adjusted. Col. 6:1 teaches the use of a sensor to sense when the patient is in an arrhythmic state.

*Claim Rejections - 35 USC § 103*

2. Claims 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prystowsky et al.

The method steps of the above claims are considered to follow obviously from the teachings of the '922 patent, when practiced by the ordinary artisan. Further, the Prystowsky device is considered to inherently modify the cardiac contraction since it prevents an arrhythmic episode from continuing.

3. Claims 58,60,65,66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prystowsky et al in view of Cohen (5119813).

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Cohen teaches the use of an oxygen sensor and a pressure sensor, see col. 3:20-44 for example. Such are common in the art of implantable cardioverter-defibrillators since they provide a more accurate determination of hemodynamic state than using the electrogram alone.

*Allowable Subject Matter*

4. Claims 12-14, 17-20, 22, 24, 25, 34-36, 38, 47, 50 are allowed.


The request for interference submitted May 26, 2006 will be forwarded to the Board when all of the above rejections have been resolved.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Scott M. Getzow  
Primary Examiner  
Art Unit 3762

SMG